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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,636	02/12/2001	Thomas D. Taggart	STEU-3045	8401

5409 7590 03/15/2002

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LATHAM, NY 12110

EXAMINER

DOUGLAS, STEVEN O

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 03/15/2002

8

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/781,636

Applicant(s)

TAGGART, THOMAS D.

Examiner

Steven O. Douglas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 February 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 1-21 and 28-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-24, 37, 39 and 40 is/are rejected.
- 7) ☒ Claim(s) 25-27 and 38 is/are objected to.
- 8) ☒ Claim(s) 1-21 and 28-36 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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***Election/Restrictions***

Applicant's election with traverse of Group II. in Paper No. 7 is acknowledged. The traversal is on the ground(s) that the search of both Groups are coextensive. This is not found persuasive because the search of Group I. requires providing a plurality of containers in a sterile tunnel, which would lead to a divergent field of search. For example, the sterile tunnel can be construed as being materially different from merely providing a sterile region associated with a valve and actuator. Accordingly, claims 1-21 and 28-36 are withdrawn from further consideration.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22,23,37,39 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Reichert.

The Reichert reference discloses a bottle filler comprising a “valve” 13 including an associated “electromagnetic actuator” 17, wherein it can certainly be assumed that all internal components of the filler is sterilized periodically and the components surrounding the valve would define a sterile region as claimed.

***Claim Rejections - 35 USC § 103***

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reichert in view of Jorss'301.

The Reichert reference discloses a filler as claimed (*supra*), but does not disclose a "measuring device" as claimed. The Jorss'301 reference discloses another filler having an associated "measuring device" 46(47), see Fig. 8, in order to precisely measure and control the volume of beverage into the associated bottles. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Reichert device to have a "measuring device" similar to that of Jorss in order to precisely measure and control the volume of beverage into the associated bottles.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Wakabayashi et al. and Hendriks et al. references pertain to fillers with associated sterile chambers.

Claims 25-27 and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

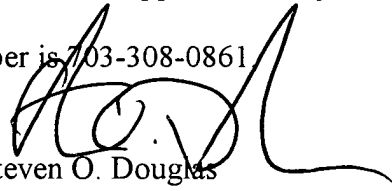
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven O. Douglas whose telephone number is 703-308-0891.

The examiner can normally be reached on Wed-Fri 6:30-7:00.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7766 for regular communications and 703-308-7766 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.



Steven O. Douglas  
Primary Examiner  
Art Unit 3751

SD  
March 8, 2002